The appellants being the party claiming enhanced compensation must show to this Court the increase in the award made by the learned Judge does not represent a fair market value of the scheduled land. We find the appellants have failed to discharge this burden. Having regard to all the evidence, we do not consider the Judge's valuation of $15,000/- per acre as inadequate, or wrong in fact or law. We therefore dismiss this appeal with costs.

Appeal dismissed

Solicitors: *Presgrave & Matthews.*

RAVINDRAN v. MALAYSIAN EXAMINATIONS COUNCIL

[F.C. (Salleh Abas C.J. (Malaya), Hashim Yeop A. Sani & Syed Agil Barakbah F.JJ.) January 10 & 16, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 286 of 1983]

Administrative Law – Certiorari – Annulment of results of candidate in examination – Application for certiorari – Delay in application – Application dismissed – R.H.C. 1980, 0. 53 r. 1A – Malaysian Examinations Council Act, 1980, s.9.

Practice and Procedure – Certiorari – Application out of time – R.H.C. 1980, 0.53 r.1A.

In this case the Malaysian Examinations Council in exercise of its powers under section 9 of the Malaysian Examinations Council Act 1980 had annulled all the results of the appellant in the 1982 S.T.P. examination. The order to disqualify the examination results was made on July 6, 1983. The appellant received the order on July 15, 1983. Order 53 r. 1A of the Rules of the High Court, 1980 provides that leave to apply for an order of certiorari shall not be granted unless made within six weeks after the date of the proceeding objected to unless the delay is accounted for to the satisfaction of the Court or Judge to whom the application is made. In this case the application was made on August 30, 1983, that is, 8 days out of time, if the time began to run from the date the Council's decision was served and 13 days out of time if time began to run from the date of the decision of the Council. The learned trial judge rejected the explanation for the delay and held the application was time-barred. The appellant appealed.

Held: since the judge rejected the explanation for delay it followed that the Court had no jurisdiction to hear the application for leave for an order for certiorari. Whether the application for an order of certiorari had merits or not was irrelevant.

Case referred to:

(1) *Mersing Omnibus Co. Sdn. Bhd.* v. *Minister of Labour and Manpower* [1983] 2 M.L.J. 54.

FEDERAL COURT.

Karpal Singh for the appellant.

M. Mahalingam (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani F.J. (delivering the Judgment of the Court): This appeal arose out of a student's dissatisfaction about the Malaysian Examinations Council's decision to annul his Sijil Tinggi Pelajaran Malaysia results awarded to him in 1982. The Council apparently did this based on the undisputed fact that his scribbled notes were found on his table during an examination on a Chemistry paper. Basically his complaint was that he had already explained the circumstances leading to the discovery of the scribbled notes on his table and secondly he was not given an opportunity to be heard before his examination results were annulled by the Council.

On March 17, 1983 the STP results were released and the appellant obtained the results slip with annulment of the Chemistry results endorsed on the slip. He appealed for a review of this annulment to the Malaysian Examinations Council in his letter dated March 27, 1983. In June, 1983 he wrote again to the Council to expedite the hearing of his appeal. In the meantime the appellant had applied for a place in the local universities as well as in the University of Singapore. Ultimately only the Universiti Sains Malaysia Penang offered him a place in the Science Course Year 1.

On July 9, 1983 the Malaysian Examinations Council notified the appellant that the Council in exercise of its powers under section 9 of the Malaysian Examinations Council Act 1980 had annulled all his results in the 1982 examination. The power of the Council is apparently contained in section 9 of the Act which reads as follows:–

> "The Council shall, in relation to a specified examination, enjoy the prerogative of awarding and withdrawing certificates, withholding and cancelling the results of any candidate, and barring any person from taking the examination."

The order to disqualify his examination results was made by the Council on July 6, 1983. He received the order on July 15, 1983. Order 53 Rule 1A of the Rules of the High Court, 1980 provides that leave to apply for an order of certiorari shall not be granted unless made within six weeks after the date of the proceeding objected to except where the delay is accounted for to the satisfaction of the Court or Judge to whom the application is

made. Therefore if time began from the date the Council's decision was served, that is on July 15, 1983, then the period expired on August, 22 1983 in which case the application was 8 days out of time. If time was computed from the date of the decision of the Council, then the application would be 13 days out of time.

The trial Judge heard the appellant's explanation for the delay. Briefly his explanation was that by July 6, 1983 the appellant had already been admitted into the Sains Universiti Penang. It was also stated in his affidavit that the notification of the Council was not brought to his solicitor's attention until much later. The explanation for the delay was not accepted by the trial Judge and he ruled that the delay had not been satisfactorily explained. Looking at the explanation we cannot honestly say that the Judge was wrong in rejecting the explanation as being unsatisfactory.

The meat of the complaint of the appellant is contained in paragraph 14 of his affidavit (page 9) supporting his application for leave which affidavit also purported to apply for an enlargement of time. It is clear that the application for an enlargement of time was not made in a proper manner as the application in the notice of motion was for leave to apply for an order of certiorari. The application in the notice of motion itself being out of time was therefore not properly before the Court.

The Judge dealt with two aspects of what he thought was the issue before him. First he dealt with the reason for the delay in applying for an enlargement of time. Secondly he dealt with the merits of the case if the explanation for the delay was accepted.

In our view the whole issue is clearly one of jurisdiction. In the event only the first consideration of the Judge is relevant. Since the Judge rejected the explanation for the delay it follows that the Court had no jurisdiction to hear the application for leave for an order of certiorari. Whether the application for an order of certiorari had merits or not was irrelevant. This principle is implicit in *Mersing Omnibus Co. Sdn. Bhd.* v. *Minister of Labour and Manpower.*[1] There had been no jurisdiction to hear the application for certiorari because Order 53 Rule 1A of the Rules of the High Court 1980 expressly directs that leave shall not be granted "unless the application is made within six weeks after the date of the proceeding".

There are constraints which may or may not be necessary but brought about by a technicality of procedure but which the Court has to enforce. A more enlightened situation would seem to obtain from the new English Supreme Court Practice (1979) which brought forth the provision (Order 53 Rule 4) that leave to apply for judicial review will be refused only if there has been "undue delay" or "unreasonable delay" in making the application. But the Rules of the High Court, 1980 are our own rules of procedure and we must abide by them as they appear.

Appeal dismissed with costs.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

AFFIN CREDIT (MALAYSIA) SDN. BHD. v. YAP YUEN FUI

[F.C. (Abdul Hamid, Mohamed Azmi & Syed Agil Barakbah F.JJ.) December 6, 1983 & January 20, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 201 of 1983]

Hire-Purchase – Failure to give written statement consisting of summary of financial obligations under proposed hire-purchase agreement – Condition precedent – Offer subject to condition precedent – Hirer in arrears of monthly instalments – Claim for outstanding balance – Claim dismissed – Contracts Act, 1950, s.2 – Hire-Purchase Act, 1967, s. 4(1) & 6.

Contract – Hire-purchase agreement – Agreement void ab initio – Lack of offer and acceptance.

In this case the appellant had let a motor car to the respondent under a hire-purchase agreement. The respondent fell into arrears with the payment and the appellant brought an action for the balance outstanding under the hire-purchase agreement. The respondent denied the whole claim and sought the protection of the Hire-Purchase Act, 1967. He alleged that the appellant had (a) failed to comply with section 4(1) of the Act by failing to give him a written agreement consisting of a summary of his financial obligations under the proposed hire-purchase agreement as set out in the second schedule to the Act, (b) failed to supply him with a copy of the hire-purchase agreement within fourteen days of its execution, an obligation imposed under section 5(1) of the Act. The President of the Sessions Court found that both the provisions of sections 4(1) and 5(1) of the Act had been breached and he dismissed the claim. On appeal, Abdul Razak J. held that on the evidence the appellant had complied with the provision of section 5(1), but he held that the appellant had violated section 4(1). The learned Judge therefore held that the appellant had failed to prove that it had entered into a valid and proper agreement with the respondent. He therefore dismissed the appellant's claim. The appellant appealed.